

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Cole's Services, Inc.
1620 East Brundage Lane
Bakersfield, CA 93307

ID No. CAL 000 268 462

Respondent

Docket HWCA 2006 1114

CONSENT ORDER

Health and Safety Code
Section 25187

1. INTRODUCTION

1.1. Parties. The California Department of Toxic Substances Control (Department) and Cole's Services, Inc. (Respondent) enter into this Consent Order (Order) and agree as follows:

1.2. Site. Respondent transports hazardous waste.

1.3. Inspection. The Department inspected Respondent on July 19, 2005.

1.4. Authorization Status. The Department authorized Respondent to manage hazardous waste by Hazardous Waste Transporter Registration Number 4483.

1.5. Jurisdiction. Health and Safety Code, section 25187, authorizes the Department to order action necessary to correct violations and to assess a penalty when the Department determines that any person has violated specified provisions of the Health and Safety Code or any permit, rule, regulation, standard, or requirement issued or adopted pursuant thereto.

1.6. Full Settlement. By their respective signatures below, the Parties, and each of them, agree that this Order, and all of the terms contained herein, are fair, reasonable, and in the public interest. This Order shall constitute full settlement of the violations alleged below. By agreeing to this Order, the Department does not waive any

right to take further enforcement actions within its jurisdiction and involving either the Respondent(s) or the Site, except to the extent provided in this Order.

1.7. Hearing. Respondent waives any and all rights to a hearing in this matter.

2. VIOLATIONS ALLEGED

2.1. The Department alleges the following violations:

2.2. The Respondent violated Health and Safety Code section 25201, subdivision (a) in on or about July 19, 2005, the Respondent stored hazardous waste (hazardous waste dirt pile) without a permit or other grant of authorization from the Department.

2.3 The Respondent violated California Code of Regulations, title 22, section 66263.20, in on or about July 19, 2005, the Respondent accepted from a generator and transported hazardous waste (hazardous waste soil) without a manifest.

3. SCHEDULE FOR COMPLIANCE

3.1. Respondent has corrected the violations cited above. Respondent shall operate hereafter in a manner that shall prevent recurrences of the violations cited in this Consent Order.

3.2. Submittals. All submittals from Respondent pursuant to this Consent Order shall be sent to:

Robert Kou, Unit Chief
Statewide Compliance Division
Glendale Branch
Department of Toxic Substances Control
1011 N. Grandview Avenue
Glendale, California 91201

3.3. Communications. All approvals and decisions of the Department regarding

submittals and notifications shall be communicated to Respondent in writing by the appropriate Branch Chief or his/her designee. No informal advice, guidance, suggestions, or comments by the Department shall relieve Respondent of its obligation to obtain required formal approvals.

3.4. Department Review and Approval. If the Department determines that any document submitted for approval pursuant to this Order fails to comply with this Order or fails to protect public health or safety or the environment the Department may:

- a. Modify the document and approve the document as modified, or
- b. Return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

3.5. Compliance with Applicable Laws. Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

3.6. Endangerment during Implementation. In the event that the Department determines that any circumstance or activity (whether or not pursued in compliance with this Order) is creating an imminent or substantial endangerment to the health or welfare of people on the Site, in the surrounding area, or to the environment, the Department may order Respondent to stop further implementation of this Order for such period of time as is needed to abate the endangerment. Any deadline in this Order directly affected by a Stop Work Order under this paragraph shall be extended by the term of such Stop Work Order.

3.7. Liability. Nothing in this Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of operations of Respondent, except as provided in this Order. Respondent may be required to take such further actions as are necessary to protect public health or

welfare, or the environment.

3.8. Government Liabilities. Neither the State of California nor the Department shall be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent, or related parties, in carrying out activities pursuant to this Order. Neither the State of California nor the Department shall be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to the Order.

3.9. Incorporation of Plans and Reports. All plans, schedules, and reports submitted by Respondent pursuant to this Order are hereby incorporated into this Order

4. OTHER PROVISIONS

4.1. Penalties for Noncompliance. Failure to comply with the terms of this Order may subject Respondent to costs, penalties and/or damages, as provided by Health and Safety Code, section 25188, and other applicable provisions of law.

4.2. Parties Bound. This Order shall apply to and be binding upon Respondent and its officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Order.

4.3. Privileges. Nothing in this Agreement shall be construed to require any party to waive any privilege. However, the assertion of any privilege shall not relieve any party of its obligations under this Order.

4.4. Integration. This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this Order.

5. PENALTY

5.1. The Respondent shall pay the Department a total of \$11,000 as penalty. The payments shall be paid in (4) four quarterly installments. The first installment in the amount of \$2,500 is due and payable on August 1, 2006; the second installment in the amount of \$2,500 is due and payable on November 1, 2006; the third installment in the amount of \$2,500 is due and payable on March 1, 2007; and the fourth installment in the amount of \$3,500 is due and payable on June 1, 2007.

Any installment payment that is received by the Department more than 15 days after it is due will be subject to a \$250 penalty, such penalty shall be paid by Respondent no later than the due date of the next installment payment. If the Respondent is late in making payments, or fails to make a full installment payment within (30) days of its due date, then the Department, at its option, may declare the entire balance of the outstanding penalty due and owing. If Respondent fails to make any payment timely as provided above, Respondent agrees to pay interest thereon at the rate established pursuant to Health and Safety Code section 25360.1. Respondent further agrees to pay all cost and attorney's fees incurred by the Department in pursuing the collection of any sums the payment of which becomes delinquent hereunder. Respondent's checks shall be made payable to Department of Toxic Substances Control, and shall be delivered together with the attached Payment Voucher to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent simultaneously to:

Mr. Robert Kou, Unit Chief
Statewide Compliance Division
Southern California Branch
Department of Toxic Substances Control
1011 N. Grandview Avenue
Glendale, California 91201

and

Mr. Ramon Perez, Esq.
Office of Legal Counsel
Department of Toxic Substances Control
9174 Sky Park Court, Suite 150
San Diego, California 92123-4340

5.2. If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code, section 25360.1, and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

6. EFFECTIVE DATE

6.1. The effective date of this Order is the date it is signed by the Department.

Dated: June 22, 2006

Original signed by Benita McNeill
Cole's Services, Inc.
Respondent

Dated: June 29, 2006

Original signed by Robert Kou
Robert Kou, Unit Chief
Statewide Compliance Division
Department of Toxic Substances Control